IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

WEDNESDAY, THE 6TH JUNE 2007 / 16TH JYAISHTA 1929

Crl.MC.No. 1807 of 2007()

CRIME 126/92 OF PETTAH POLICE STATION
LP.50/1996 of JUDL. MAGISTRATE OF FIRST CLASS COURT-III, TRIVANDRUM

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PETITIONER: (4TH ACCUSED):

KOCHANI @ KOCHANUJAN,
TC.36/771, PUTHUVEL PUTHEN VEEDU,
KADAKAMPALLY VILLAGE, THIRUVANANTHAPURAM.

BY ADV. SRI.SUMAN CHAKRAVARTHY

RESPONDENTS:

STATE OF KERALA,
REP. BY ITS PUBLIC PROSECUTOR,
HIGH COURT OF KERALA.

BY PUBLIC PROSECUTOR SRI. S.U. NAZAR

THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION ON 06/06/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R. BASANT, J.

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Crl.M.C.No. 1807 of 2007

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Dated this the 6th day of June, 2007

O R D E R

The petitioner is the 4th accused, who along with others faces indictment in a prosecution, inter alia, under Section 427 r/w. 149 I.P.C. and Section 3 of the Indian Explosives Act. The crux of the allegations is that the petitioner along with others were members of an unlawful assembly of persons, who trespassed into the house of CW1 and caused damage to the house by using explosive substances. The alleged incident took place on 25.10.2007. Investigation was completed and final report was filed. The petitioner was not available for trial. The co-accused, who faced trial were found not guilty and acquitted on the basis of the evidence available in that case. The petitioner has now submitted that the case against him has been transferred to the list of long pending cases. He prays that the prosecution against him may be quashed.

2. What is the reason? The only reason urged before me is that the co-accused have been found not guilty and acquitted in the trial held against them. The question was concluded by the decision of

the Full Bench in **Moosa** v. **Sub Inspector of Police** (2006 (2) KLT 552). It is by now trite that the mere fact that the co-accused have been found entitled for acquittal in the trial held against them on the basis of the evidence adduced is no reason for an absconding co-accused to claim any benefit or advantage. I agree with the learned counsel for the petitioner that inspite of the dictum in **Moosa,** there may be a class of cases where the bottom is knocked out of the prosecution case making further proceedings against the co-accused unnecessary and perverse. That certainly is not the situation in this case. The co-accused were found entitled for acquittal not on the ground that no incident had taken place or that the prosecution is not maintainable, but only on the ground that the witnesses had not supported the prosecution case and that there was no proper identification of the accused. That finding cannot deliver any advantage to the petitioner herein.

3. The learned counsel for the petitioner finally submits that the petitioner finds himself in the unenviable predicament of a non-bailable warrant chasing him. It is certainly for the petitioner to appear before the learned Magistrate and explain to the learned Magistrate the circumstances under which he could not earlier appear before the learned

Magistrate. I have no reason to assume that the learned Magistrate would not consider the application for bail on merits, in accordance with law and expeditiously. Every court must do the same. No special or specific direction appears to be necessary. Sufficient general directions have already been issued by this Court in the decision in **Alice George** v. **Dy.S.P. of Police** (2003 (1) KLT 339).

4. This Crl.M.C. is accordingly dismissed. I may hasten to observe that the petitioner's right to raise all relevant contentions before the learned Magistrate, including the right to raise a plea of discharge, shall remain unfettered by the dismissal of this petition.

(R. BASANT)
Judge

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